

Purpose

To establish a procedure in conformance with the Governmental Records Access and Management Act (GRAMA), [U.C.A. 63-2-2], while insuring adequate notice to the Department, the State Office of Risk Management and Attorney General's Office on all data or information released to the public, contractors, insurance companies or private attorneys for which there are pending claims or litigation or possible liability for the Utah Department of Transportation.

Policy

The Government Records Access and Management Act (GRAMA) is a comprehensive law dealing with management of government records. This Act is an attempt to balance the public's constitutional rights to access government information, protect the privacy of individuals of which personal data has been collected, and monitor government access restrictions to records.

Definitions

Documents Classification Report

A State Archives inventory report which determines whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Section 63-1-101(3)(b).

Procedures

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Responsibility: All employees

Actions

1. **Destruction or Improper Disclosure of Records:** All records created or maintained by an employee are declared property of employee who has lawful access and who intentionally discloses or provides a copy to any person knowing such disclosure is prohibited is guilty of a class B misdemeanor {U.C.A. 63-2-905} and any employee who has lawful access and provides a copy to any person knowing such disclosure is prohibited is guilty of a class B misdemeanor {U.C.A. 63-2-801} and subject to disciplinary action {U.C.A. 63-2-804}, additionally a person is guilty of a Class B misdemeanor for knowingly making false entry or false alteration of anything belonging to the State {U.C.A. 76-8-11}.

Responsibility: All Region/District and Division employees with access to or who routinely receive copies.

2. **Department “Documents Classification Report”:** No documents, records, data or reports shall be released by any employee except as provided in the “Department’s Documents Classification Reports” of and/or as provided by GRAMA and this procedure. The classification categories are as follows:
 - A. **PUBLIC:** records not classified as private, controlled protected, or exempt;
 - B. **PRIVATE:** records open only to the individual to whom the record pertains and other authorized persons or agencies;
 - C. **CONTROLLED:** records open to authorized persons or agencies but not open to the individual to whom the records pertain;
 - D. **EXEMPT:** documents which are governed by a state or federal statute that may only be released in special circumstances, [SEE: {U.C.A. 63-2-202 (8) (a)(I-v)}, “Research Purposes:].
 - E. **PROTECTED:** records with non-personal data that are open to the authorized persons or agencies. Protected documents are defined in {U.C.A. 63-2-304} and include:

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1. Records prepared by or on behalf of the Department in anticipation of litigation that are not available under the rules of discovery;
 2. Records disclosing an attorney's work product including the mental impressions, or legal theories of an attorney or other representatives of the Department concerning litigation;
 3. Records of communications between the Department and an attorney representing, retained or employed by the Department if the communications would be privileged as provided by GRAMA.
 4. Records of investigations of loss occurrences that may be covered by the Division of Risk Management, the Employers' Reinsurance Fund, or similar divisions in other governmental agencies;
 5. Investigative Officer's Reports which may only be released by the Department of Public Safety; and
 6. Employees' Personnel Files and/or personnel records except as may be allowed by the Office of Human Resources.
 7. Documents subject to 23 U.S.C. Sec. 409 are not discoverable nor can they be admitted as evidence in Federal or State court or considered for other purposes of damages arising from any occurrence.
3. **Steps to Be Taken Upon Receipt of a Record Request:** When a request for access to information is submitted to an agency of the Department they should:
- A. **DOCUMENT FOR PUBLIC RELEASE**-Documents which are prepared for current public distribution may not require written request. This exception also applies to engineering data provided to a contractor or consultant which is integral to the performance of a Department project.
 - B. **MUST BE WRITTEN REQUEST**-Determine if the request describes the record requested with reasonable specificity, [SEE: Exhibit A "Document Release Form"];
 - C. **MUST BE SPECIFIC**-Determine if the request describes the record requested with reasonable specificity. If what has been requested is not understood, attempt to contact the requester for further clarification, [SEE: GRAMA Handbook Part II, Sec. C].

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- D. **DATE RECEIPT OF THE REQUEST**-Log the request in (the first day is counted as the day following receipt (Utah Rules of Civil Procedure #6). The time for response begins to run when the request is received so it is important to note the date it is received by either entering it in a log or date stamping the request;
- E. **DETERMINE ORIGIN OF RECORD**-Make the request know to the district/division Records Officer or the designated authority(s) who will then refer to the “UDOT Documents Classification Report” to evaluate the following:
1. Origin of the record (creator/custodian of original).
 - a) If the record does not originate from the receiving office the request is to be immediately forwarded to the appropriate office. The time limit for response should begin when the record is received by that office; or
 - b) If the record does originate from the receiving office it should be handled as the “UDOT Documents Classification Report” indicates (clarified on pages 2 & 3 of this procedure);
- F. **OBTAIN PRIOR APPROVAL IF NEEDED**-Documents classified as private (2-B) or protected (2-E) or documents classified as public (2-A) but which relate to pending litigation against the Department or issues which the employee has reason to believe may result in litigation involving the Department shall be released only through the Office of Loss Control as provided by law, “Rules of Discovery” and/or as directed by the Office of the Attorney General. Personnel related documents shall require the approval of the Office of Human Resources. [SEE: Subpoena 2-D {Exempt} of this procedure. Requester must show proof of identification **before** the record is disclosed, [SEE: Exhibit B].
- G. **RESPOND**-Except for the extraordinary circumstances (outlined in 4:A-H of this procedure), the Department shall respond to a record request no later than ten business days after receiving the request or 5 business days after receiving a written request if the requester demonstrates that the expedited response benefits the public. The Department shall respond to a record request as follows:
1. Approve or provide the record requested;
 - a) Deny the request [SEE: 6:A-B];

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- b) Notify the requester that it does not maintain the record and provide, if known, the name and address of the governmental agency that does maintain the record.
- 4. **In Cases of Extraordinary Circumstances:-** Notify the requester that because of the extraordinary circumstances listed it cannot immediately approve or deny the request, and specify the earliest time and date when the records will be available, [SEE: Exhibit C, "Notice of Extended Time for Response to Records Requests"]. The following circumstances constitute extraordinary circumstances that allow the Department to delay the Department to approval or denial:
 - A. A governmental agency is using the record, in which case, the Department shall immediately request that the other agency return the record:
 - B. governmental agency is using a record as part of an audit and returning the record before the completion would impair the conduct of the audit.
 - C. The request is for a voluminous quantity of records;
 - D. The Department is currently processing a large number of record requests;
 - E. The request requires the Department to review a large number of records to locate the records requested;
 - F. The decision to release a record involves legal issues requiring analysis of requests, statutes, rules, ordinances, regulations or case law;
 - G. Separating public information from private, confidential, or protected information requires extensive editing; or
 - H. Separating public information from private, controlled protected, or exempt requires computer programming.
- 5. **When a Record Request Must Be Delayed-**If the Department determines that the extraordinary circumstances listed on page {5:A-H} creates a situation where a record request must be delayed, the following action should be taken:
 - A. For the circumstances cited under {4A} of this procedure, the governmental agency currently possessing the record shall be requested to return the record to the Department within five business days of the request unless the record would impair the holder's work;
 - B. For the circumstance cited under {4B} of this procedure, the Department shall notify the requester when the record is available for inspection and

copying;

- C. For the circumstances cited under {4C, D & E} of this procedure:
 - 1. Disclose the public records that it has located;
 - 2. Provided the requester with an estimate of the amount of time it will take to finish the search;
 - 3. Complete the search and disclose the requested records as soon as reasonably possible;
- D. For the circumstance cited under {4F} of this procedure, approve or deny the request within five days after the response time designated for the original request has expired;
- E. For the circumstance cited under {4G} of this procedure, the Department shall fill the request within 15 business days from the date of the original request; or

6. Denying Records:

- A. If the Department does not provide a requested record or does not issue a denial within the specified time period it is considered the equivalent of a determination to deny access to that record [SEE: Exhibit D, "Notices of Denial Form"];
- B. If the Department denies the request in whole or part, it shall send a notice of denial to the requester's address. The notice of denial shall contain the following information:
 - 1. A description of the record or portions of the record to which access was denied (providing the description does not disclose private controlled, protected or exempt information);
 - 2. Cite any provisions of GRAMA, {U.C.A. 63-2-2}, or other state statutes or regulations that {estimate} the record from disclosure (providing the citations do not disclose private, controlled or protected information);
 - 3. State that the requester has the right to appeal the denial to the Executive Director and then to either the records committee or district

court, Appeals Process: {U.C.A. 63-2-4}.

- a. Briefly summarize the appeals process, the time limits for filling an appeal, and the name and business address of the Executive Director, [SEE: Exhibit E, "Notice of Appeal Form"].
7. **Subpoena or Court Order:** - Requests made by service of subpoena or court order (to produce documents) shall be coordinated with the Department Office of Loss Control prior to releasing any document(s) and/or appearing for deposition.
8. **Questions Regarding Requests-**Notify Loss Control of any questions regarding requested items listed in {2-E:1-7} of this procedure for approval to release information requested.
9. **Fees for Records:-**will be charged for actual costs and may include the following:
 - (a) cost of staff time for summarizing, compiling, or tailoring the record either into an organization or media to meet the person's request;
 - (b) cost of staff time for search, retrieval, and/or other direct administrative costs for compiling;
 - (c) fees for a record that is the result of computer output other than word processing the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information.
 - A. Government agencies may not charge fees for:
 1. Reviewing a record to determine whether it is subject to disclosure;
or
 2. Inspecting a record.
 - B. Fees:
First 50 pages 50 cents per copy
Second 50 pages 35 cents per copy
All additional copies 20 cents per copy
 - C. Hourly labor rate \$ for staff time for administration, search, retrieval and other direct administrative costs shall only be charged for providing electronic services associated with formatting or interfacing the information for particular uses. NOTE: in all other cases these costs are included in the copy fees described in {9B}.
 - D. An appeal of the charges assessed shall be made in writing with the appropriate Records Officer and shall be reviewed by the Executive Director.

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Responsibility: Office of UDOT Risk Management

10. Coordinates with State Attorney General on any questionable requests or secures approval to release and forwards copies of all documents or information to the State Attorney when so requested on litigation-related cases.
 - A. Maintains a file (two years) and/or coordinates data with open case files.
 - B. Invoices requester and insures proper credit to appropriate division.